IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 518 OF 2004

SMT. LOURDINA PEREIRA,AMBELIM,SALCETE GOA. ....Petitioner

Versus

SMT.AUREA VIEGAS AND 4 ORS., ...Respondents

Shri J.F. Melo,Advocate for the Petitioner.
Shri Sudesh Usgaonkar, Advocate for Respondents No.1 to 4.

Coram:- R. M. LODHA, J.

Date:- 5th October, 2005

P.C.:

By my Order dated 31st August, 2005, while issuing Notice to the respondents, it was made clear that the Writ Petition shall be heard and disposed of at the motion hearing stage. Respondent Nos.1 to 4 have been served and represented by their Advocate. The legal heirs of Respondent No.5, though served remain unrepresented.

2. The petitioner is the original plaintiff in Regular Civil Suit No. 575/2000/III pending in the Court of the Third Addl. Civil Judge Senior Division, Margao. The said suit came to be dismissed in default on 31.3.2003. The application was made by the plaintiff for restoration of the suit. The said application suffered from delay and hence an application was made for condonation of delay. The grounds set up in the application for condonation of delay for setting aside the Order dated 31.3.2003 was that the plaintiff was suffering from diverse ailments like diabetes, depression and spondolitis. Because of sickness and undergoing medical treatment she was unable to contact her Advocate to make the resotration application in time. The medical certificate in support of her ailments was also produced by the plaintiff.

3. The learned trial Court was not satisfied with the explanation for condonation of delay put forth by the plaintiff and accordingly dismissed the application by the Order dated 29th September, 2004 giving rise to the present Writ Petition.

4. The learned counsel for the respondents No.1 to 4 invited my attention to the statement made in paragraph 3 of the application for restoration and submitted that the ground of illness set up by the plaintiff in the application for condonation of delay is inconsistent thereto and, therefore, does not deserve to be believed.

5. There is no inconsistency in the case set up by the plaintiff that because of her illness she could not contact her lawyer. The statement made in paragraph 3 of the application for restoration also states that as a matter of fact in paragraph 2 of the application for restoration, the plaintiff averred that she was precluded from attending the Court on 31.3.2003 and prior dates of hearing as she was undergoing medical treatment. In paragraph 3 it is stated by her that she is bread earner in the family and due to her illness her son had to seek employment on a trawler and was away at sea and could not attend the hearing. The facts that have come on record do not show that the plaintiff was guilty of contumacious conduct in protracting the litigation. As a matter of fact she is the plaintiff and no justifiable reason is discerned as to why she should be interested in not attending the proceedings deliberately but for compelling reasons.

6. The inconvenience that has been caused to the Respondents No.1 to 4 can be compensated by awarding reasonable costs.

7. Consequently the Order dated 29.9.04 passed by the third Addl. Civil Judge S.D., Margao is quashed and set aside. Civil Misc. Application No.23/2004/III in Regular Civil Suit No.575/2000/III made by the petitioner/plaintiff is granted subject to payment of costs of Rs.5000/- to Respondents No.1 to 4 within two weeks from today. Trial Court shall

proceed with the matter accordingly.

Writ Petition is disposed of.

R. M. LODHA, J.

sl.